

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

MERIT APPEALS BOARD, State of Hawaii,

Petitioner.

CASE NO. DR-00-92

DECISION NO. 463

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECLARATORY
ORDER

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECLARATORY ORDER

On November 29, 2006, Petitioner MERIT APPEALS BOARD, State of Hawaii ("MAB"), by and through its counsel, filed Petitioner Merit Appeals Board's Proposed Findings of Fact and Conclusions of Law ("Proposed Order") with the Hawaii Labor Relations Board ("Board"). As the Board did not receive any objections or exceptions to the Proposed Order, the Board hereby adopts the MAB's Proposed Order, as modified.

FINDINGS OF FACT

1. On or about February 8, 2002, Steven E. Coulson ("Coulson"), Registered Professional Nurse III with Hawaii State Hospital, Adult Mental Health, Department of Health ("DOH"), was notified that he would be terminated effective February 22, 2002 because the DOH was unable to locate a suitable placement for him within the DOH and the Department of Human Resources Development was unable to find a suitable position for him after a statewide search.
2. On or about March 13, 2002, Coulson appealed his termination to the Civil Service Commission, State of Hawaii ("Commission").¹
3. In his appeal, Coulson alleged that DOH improperly terminated him from employment due to his workers' compensation injury. Coulson alleged that he was discriminated against because the State was unable to locate another position for him with the medical restrictions from his physician.

¹By letter dated February 21, 2002, DOH Departmental Personnel Officer David B. Knight advised Coulson, inter alia, to appeal to the State Civil Service Commission if he disagreed with his termination for failure to find suitable placement for him.

4. The Commission was abolished prior to hearing Coulson's appeal, effective July 1, 2002, pursuant to Act 253 (2000).
5. On or about July 30, 2005, Coulson requested that his appeal be heard by the Merit Appeals Board ("MAB") in accordance with Act 34 (2005).
6. On or about November 9, 2005, the DOH challenged MAB's authority to hear Coulson's appeal on the basis that Coulson had alleged that his discharge based on an unsuccessful job search was unlawful under Hawaii Revised Statutes ("HRS") § 386-142,² and the DOH contended the case should properly be heard by the Department of Labor and Industrial Relations pursuant to HRS § 386-73.³

²HRS § 386-142 provides as follows:

Employment rights of injured employees. It shall be unlawful for any employer to suspend or discharge any employee solely because the employee suffers any work injury which is compensable under this chapter and which arises out of and in the course of employment with the employer unless it is shown to the satisfaction of the director that the employee will no longer be capable of performing the employee's work as a result of the work injury and that the employer has no other available work which the employee is capable of performing. Any employee who is suspended or discharged because of such work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the suspension or discharge and during the period thereafter until the employee secures new employment. This section shall not apply to the United States or to employers subject to part III of chapter 378.

³HRS § 386-73 provides as follows:

Original jurisdiction over controversies. Unless otherwise provided, the director of labor and industrial relations shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in section 386-91. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the intermediate appellate court, subject to chapter 602, as provided in sections 386-87 and 386-88, but in no case shall an appeal operate as a supersedeas or stay unless the appellate board or the appellate court so orders.

CONCLUSIONS OF LAW

1. The MAB has general jurisdiction to hear appeals which were pending before the Commission at the time of its abolition on or about July 1, 2002. HRS § 76-14(d) (Act 23 (2005)).
2. The MAB shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency. HRS § 76-14(c)(1).
3. The MAB shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii Labor Relations Board. HRS § 76-14(c)(2).
4. The Director of Labor and Industrial Relations has original jurisdiction to hear all controversies arising under HRS Chapter 386. HRS § 386-73.
5. Coulson's appeal alleges a violation of rights of an injured employee which are addressed under HRS § 386-142.

ORDER

The MAB lacks jurisdiction over Coulson's appeal which alleges he was wrongfully terminated as a result of discrimination as an injured worker which is prohibited by HRS § 386-142.

DATED: Honolulu, Hawaii, December 21, 2006

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member
SARAH R. HIRAKAMI, Member

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